

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO. UD808/2008

Employee

Against the recommendation of the Rights Commissioner in the case of:

Employee

V

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N O'Carroll-Kelly BL

Members: Mr W Power
Mr P Woods

heard this appeal at Dublin on 25th November 2008

Representation:

Appellant: Mr Tom O'Dwyer, SIPTU,
Dublin Services Branch, Liberty Hall, Dublin 1

Respondent: Tim O'Connell, IBEC
Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

The only issue the Tribunal has to decide is the appropriateness of reinstatement as a remedy. In deciding this issue the tribunal must be satisfied firstly, that the working relationship between the claimant and the respondent company remains one of mutual trust and understanding. Secondly, that the views of both parties in relation to the issue of reinstatement have been established and considered. Thirdly, that reinstatement would not place added responsibilities on either party other than the normal employer/employee responsibilities.

The Tribunal is satisfied based on the evidence adduced before it that the relationship between the parties has irretrievably broken down. The claimant's attitude and approach to the respondent's investigation into the complaint made by a co-worker was the main contributing factor to the breakdown of that relationship. The respondent company has a legal obligation to investigate complaints made by employees, particularly ones of the nature of the co-worker's complaint. The claimant's attitude to the investigation seriously frustrated the process and necessitated the respondent company involving more members of its staff than it would ordinarily have had to.

The Tribunal is satisfied that the respondent company's view that it could no longer work with the claimant due to the breakdown of their relationship is on balance the correct one. To date the claimant maintains the view that the respondent company were wrong in adopting the approach they did in relation to the complaints made by his co-worker. He maintains the view that the issue was an in house union matter and should have remained that way. He further maintains the view that his behaviour towards his co-worker was not such as to warrant a company investigation. (This issue is not one which the tribunal had to decide.) His continued failure to recognise the respondent company's legal obligations to investigate the matter lends itself to the company's view that it can no longer work with the claimant.

The Tribunal is also satisfied that to reinstate the claimant would place additional responsibilities on the respondent company particularly in relation to its dealings with the union, of which the claimant remains a member, and in relation to any potential future employee/ employer disputes involving the claimant.

The Tribunal upholds the rights commissioner's decision and accordingly the claimant's appeal must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)